IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 682 of 2000

to

FIRST APPEALNo 694 of 2000

with

FIRST APPEAL Nos.1396 to 1418 of 2001

with

FIRST APPEAL Nos.421 to 439 of 2001

with

FIRST APPEAL Nos.1880 to 1890 and 2688 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

RAMABHAI PRAHLADBHAI PATEL

Appearance:

First Appeal No. 682 to 694 of 2000, 1396 to 1418 and 421 to 439 of 2001.

MR AD OZA, GP, with Mr GC MAJMUDAR for the appellant.

MR PV NANAVATI WITH MR DEVENDRA A PATEL for Respondents

First Appeal Nos.1880 to 1890 of 2000:
MR PV NANAVATI WITH MR DEVENDRA A PATEL for the appellants
MR AD OZA, GP for respondent No.1.
MR GC MAJUMDAR for respondent No.2
FIRST APPEAL No 2688 of 2000:
MR PV NANAVATI with MR VP NANAVATI for the appellant
MR AD OZA for respondent No.1
MR GC MAJMUDAR for respondent No.2.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this four groups of appeals, under section 54 of the Land Acquisition Act, 1894 (Act) common questions are raised and they arise out of three awards of the same reference Court and upon joint request, they are being disposed of by this common judgment, simultaneously.

The first group of appeals, bearing First Nos.682 to 684 of 2000 and fourth group of first appeals bearing First Appeal Nos.1880 to 1890 of 2000, arise out of the common award of reference Court, dated 15.10.99 and arise out of Land Acquisition Reference Nos.436/99 to 448/99. The first group is at the instance of the acquisition authority and acquiring body, whereas, the fourth group is at the instance of the original owners of the land. In these groups of appeals, notification under section 4(1) of the Act was issued on 22.6.90.

In so far as the second group of appeals is concerned, they are at instance of acquisition authority and acquiring body and arising out of common award of reference Court dated 19.2.2000 out of the land Acquisition Reference Cases bearing Nos.3206/93 to 3224/94 and 786/96 and 788/96. In this group, notification under section 4(1) of the Act is dated 10.8.90.

In the third group of appeals, the date of notification under section 4(1) is dated 22.6.90 and challenge is against the common award passed by the same Court dated 18.12.99 arising out of Land Reference Case Nos.250/99 to 267/99 and 902/99.

The common purpose and object of acquisition of lands in this four groups of appeals is for construction of Narmada canal for Narmada dam, which, as such, has attracted global attention. The land involved is of village Karannagar. In first group of appeals, the Land Acquisition Officer by his award dated 25.8.92, assessed and offered an amount of Rs.3.90 per sq. mtr. against the claim of Rs.100 per sq. mtr. made by the claimants. So is the position in group No.4 as the entire group arising out of the common award, whereas, in appeals of group No.2, the Land Acquisition Officer awarded the same amount per sq. mtr. by a separate order dated 3.8.93. So is the position in case of group No.3.

The claimants being dissatisfied by the assessment of compensation made by the Land Acquisition Officer at the rate of Rs.3.90 per sq. mtr. in the award of the Land Acquisition Officer, desired the competent authority to make reference under section 18 against the award of the Land Acquisition Officer under section 11 of the Act. That is how, the references came to be made to the District Court, at Mehsana.

All the references, in respect of these four groups of appeals were heard by the reference Court. The parties relied on oral, as well as, documentary evidence before the reference Court in three main groups. Earlier, comparable awards were cited and relied on by both the parties. The reference Court, after considering the facts and circumstances and the comparable awards relied on by the parties, decided three groups by three separate awards by enhancing the amount of compensation assessed and offered by the Land Acquisition Officer. In first group, the reference Court award is of 15.10.99, whereby, the claimants came to be awarded Rs.35 per sq. mtr. except in one case in which the amount of Rs.38 is awarded for special reasons which is not, seriously, in controversy in this group of appeals. Whereas, in the second group of appeals, the reference Court by its award dated 19.2.2000, awarded Rs.40.60 per sq. mtr. and in third group of matters the reference court awarded an amount of Rs.35 per sq. mtr. by its award dated 18.12.99. The appeals involved in group 1, 2 & 3 are at the instance of the acquiring body and acquisition authority, whereas, fourth group, as stated earlier, is

at the instance of some of the original claimants, whose land came to be acquired.

In short, 12 appeals under section 54 of the Act are, at the instance of the original claimants which is in group 4, whereas, 55 appeals are at the instance of the Acquisition Authority and acquiring body.

We have heard the learned advocates appearing in this four groups of appeals, threadbare. They have taken us through the relevant oral, as well as documentary evidence in course of their submissions. We have, also, considered the relevant proposition of law and we have, also, examined the case law relied on and referred to in course of submissions before us, to which reference will be made by us hereinafter, as and when necessary.

We have, in course of submissions before us, considered threadbare the factual profile and the material and relevant landscape of the facts and evidence. Since four groups are being disposed of by this common judgment arising out of three awards of the reference Court under section 18 of the Act, we deem it expedient to highlight the factual matrix in the following tabular form:

	FA Nos.	FA Nos.	FA Nos.
Village:	Karannagar 682 to 694/2000	1396 to 1418/2000	421 to 439/2001
	1880 to 1890/2000	2688/2000	
Date of Sec.4 notification Govt. Gazette	22.6.90	10.8.90	22.6.90
Date of Sec.6 Declaration	24.10.90	30.6.91	6.10.90
Date of Award	25.8.92	3.8.93	
Rate award (per sq.mtr)	3.90	3.90	3.90
Rate claimed	100.00	100.00	100.00
Rate awarded by Reference Court	35/- & 38/-	40.60	35/-.
Award date	15.10.99	19.2.2000	18.12.99
FA Nos. claimed for enhancement	1880 to 1890/00	2688/00	
	Rs.42/-	Rs.42/-	
Claimants/Applicant's Deposition	Ex.12, 34, and 41.	Ex.15	
Village form No.7/12			

1983-84 to 1991-92 Ex.13 to 22 Ex.16 to 42

Cert. of Talati cum
Mantri and Sarpanch Ex.23 Mark 14/29

Judgment of village
Budasan dated 16.5.95 Ex.24
in LAR No.366/89 sec.4
Notification dated 1.3.79.

Judgment of vill.Budasan
dated 3.8.96 in FA No. Ex.25 Ex.44
6484/95 in above case

Judgment of vill. Chatral
dt.14.12.95 in LAR No.971/89
Sec.4 noti. dated 19.8.95 Ex.26 Ex.45

In so far as the proposition of law for the purpose of determination of market value on the relevant and material data, matters to be considered have been highlighted in number of decisions. Section 23 of the Act provides matters to be considered for determining the amount of compensation in case of acquisition of land. They are :

A. (1) Market value of the land
(2) Damage to standing crops or trees
(3) Damage for severance of other lands
(4) Injurious affection of other property moveable or immoveable, in any other matter or his earnings.
(5) Expenses incurred in cases of change of residence or place of business in consequence of the acquisition.
(6) Damage, if any, bona fide resulting from diminution of profits of land from the time of declaration under Section 6 and the time of the Collector's taking possession of the land.

B. In addition to the market value interest at the rate of 12% per annum on the market value from the date of the publication of the notification under section 4(1) to the date of the award or the date of taking possession, whichever is earlier.

C. In addition to the market value solatium at the rate of 30% of the market value.

After having dispassionately examined the entire evidence, it is very clear that these three groups of references came to be decided by the Presiding Officer of the Reference Court. That is the reason why, while appreciating the evidence in group 1 and 3, the reference Court enhanced the amount to Rs.35 per sq. mtr. from an amount of Rs.3.90 offered by the Land Acquisition Officer whereas, in matters contained in group No.2, the Presiding Officer of the Reference Court, upon appreciation of the facts awarded an amount of Rs.40.60 per sq. mtr. However, the common feature noticed by us is that in the three awards under section 18, reliance is placed, mainly, on the awards of the same reference Court. It would be, therefore, interesting to refer here, at this stage, the material particulars covered under the different awards relied on by the reference Court and some other awards also by the parties.

There is no dispute about the proposition of law that in determining the market value in terms of provisions of section 23 of the Act, the comparable award under the Act is an important piece of documentary evidence required to be examined and evaluated, in the light of the facts. The reference court has placed reliance on the award at Mark 65/1. There is no satisfactory reason or explanation as to why it is only given Mark and not regular Exhibit number. But that would not deter us from taking into consideration, for the purpose of determination, of the market value to examine the merits and challenge against the appeals in these four groups, as the learned advocates appearing for the parties under instructions has, consensually, stated before us that the same may be considered as it is one of the relevant documentary evidence and it has, also, been relied on by the reference Court.

Award, at Mark 65/1, dated 20.4.98 in LAR No. 1778/92 pertained to the acquisition of lands of village Acharasan which is very close to the lands acquired in this group of appeals. In that group of matters, notification under section 4(1) of the Act was issued on 16.6.90. From para 20 of the impugned judgment and award, it is amply clear that the reference Court has awarded an amount of Rs.32.70 per sq. mtr. under section 18, in relation to the lands of village Acharasan.

In so far as appeals in group 1, 2 & 3 are concerned, they are at the instance of the acquiring body and acquisition authority. In these groups, reliance is placed on Ex.24, 25, 26, 51 and also the documentary

evidence. They have also placed reliance on witness Ajitkumar Ratilal Gandhi, Dy. Ex. Engineer and Prafulchandra Becharbhai Solanki, Special Land Acquisition Officer.

The main question which is in focus in these groups of appeals revolves around the assessment and evaluation of market value as on the date of issuance of notification under section 4(1) of the Act. We have, dispassionately, examined the evidence of the witnesses of both the parties. We have, also, examined the revenue record, maps of revenue sim of village Karannagar and AUDA based maps at Ex.29 and also the documentary evidence of revenue record in the form of certificate of Talati-cum-Mantri and Sarpanch of Karannagar village and other documentary evidence relied on by the parties.

Appeals in group 4, the main contention is that in view of the awards produced at Ex.26 and 51, the reference Court has not properly examined and appreciated the evidence on record and as a result of which the claimants are awarded less amount of compensation. Therefore, the submission made in this group is that the reference Court ought to have awarded at least an amount of Rs.42/per sq.. mtr., whereas, the contention of the acquiring body and acquisition authority has been that the amount of compensation fixed by the reference Court under section 18 is on a higher side in view of the documentary evidence produced on record.

With a view to appreciate the merits and rival contentions advanced before us in course of submissions and also to examine the merits and challenge against the appeals involved in this four groups, let us consider the relevant evidence relied on and placed on record. It may be stated, at this stage, that the map of revenue sim of village Karannagar is produced in all the four groups of references at Ex.27, 28, 46 and 47. AUDA based maps are produced at Ex.29 and 48. Revenue record is produced at Ex.16 to 42 in two groups. Sale deeds are produced at Ex.59 and 60 in two out of four groups.

Reliance is placed by the reference Court on an award of land situated in village Acharasan at Mark 65/1, whereby, the reference court awarded an amount of Rs.32.70 per sq. mtr., whereas, the basis of this award is the award produced at Ex.24 dated 16.6.95 in LAR No.366/89. The date of notification under section 4 in that group was 1.3.79 in which the market price fixed is at Rs.20/- per sq. mtr. The award at Mark 65/1 is in respect of lands of village Acharasan dated 24.4.98. The date of

notification under section 4 of the Act in that group of matters was 16.6.90. As per award Ex.24, the amount of market rate fixed at the rate of Rs.20 per sq. mtr. in respect of land situated in village Budasan which is also adjoining to the lands acquired in this group of matters of village Karannagar in which the dates of three notifications under section 4(1) are 22.6.90, 10.8.90 and 22.6.90.

As per Ex.24, award in respect of village Budasan, the market rate is Rs.20 per sq. mtr. by the reference Court wherein the date of notification under section 4 is 1.3.79. There is no dispute about the fact that ordinarily, 10 per cent rise in the market price is required to be considered per year for the purpose of just and reasonable amount of market value under section 23 of the Act. This proposition of law is very well settled in the following case law, about which there is no dispute.

(1) 1998(1) GLR 130 - Dy. G.M.ONGC, v. Chaturji Lalaji.
(2) 1997(2) GLH 773 - Special Land Acquisition Officer v. Motibhai Mohanbhai.

In view of the aforesaid proposition of law, the market price could have been fixed in respect of lands acquired in village Karannagar at least at the rate of Rs.42/- per sq. mtr. since there is a gap of 11 years after the award Ex.24 came to be passed. It appears that the reliance on award Mark 65/1 dated 24.4.98 is though based on Ex.24 award, the reference court has awarded only an amount of Rs.35 per sq. mtr. in two group of matters and Rs.40.60 in other groups. On the basis of reliable comparable documentary evidence in the form of award produced at Ex.24, the reference Court ought to have fixed the market price or market value at the rate of Rs.42 per sq. mtr. in view of the aforesaid factual profile and settled legal proposition.

Of course, the claimants have placed reliance on the award, at Ex.26, dated 14.12.95 in respect of acquisition of land of village Chhatral in LAR No.971/89 wherein the notification under section 4 of the Act was issued on 19.8.85 and in which an amount of Rs.70 per sq. mtr. came to be awarded to the claimants. It is not in dispute that the lands covered under Ex.26 are situated 3 k.m. away from lands covered under the impugned awards. We do not advance the proposition that award in respect of land situated 3 k.m away cannot be considered. But it

need not be considered in the present group of appeals for the simple reason that when the awards which are comparable, reliable and in respect of lands close to the lands covered under the impugned award are available. Therefore, award Ex.26 is required to be excluded from consideration in this group of appeals.

No doubt, the reliance placed on Ex.51 is also emphasised on behalf of the claimants. It is in respect of acquisition of land situated in same village, like that, Karannagar. The said award is dated 4.11.99 in LAR No.3205/93, wherein, the date of notification under section 4 was 22.6.90. Therein, the reference Court awarded an amount of Rs.40.60 per sq. mtr.

After having taken into consideration the entire testimonial collection and the relevant reliable and comparable documentary evidence, the assessment and evaluation of the market rate made by the reference court is required to be enhanced upwardly. In our opinion, keeping in mind the design and desideratum of the provisions of section 23 of the Act and the facts and circumstances emerging from the record of the present case and the aforesaid comparable reliable documentary evidence, the appellants-claimants are found entitled to an amount of Rs.42/- per sq. mtr. instead of the amount determined by the reference court. Therefore, the appeals covered under group 4 are required to be allowed, partly, whereas the appeals covered under group 1, 2 & 3 preferred by the acquiring body and the acquisition authority are required to be dismissed.

Consequently, appeal covered under group 4, i.e. First Appeal Nos.1880 to 1890 of 2000 and 2688 of 2000 are partly, allowed to the aforesaid extent and the appellants-claimants are granted an amount of Rs.42/- per sq. mtr. with resultant other statutory benefits in respect of the lands acquired, with costs. Appeals covered under group 1, 2, 3, i.e. First Appeals Nos.682 to 694 of 2000, 1396 to 1418 of 2001 and 421 to 439 of 2001 shall stand dismissed.

Our attention was invited that the acquiring body or the acquisition body have not paid or deposited the amount of compensation even as per the impugned awards under section 18 of the act. Therefore, they are directed to deposit before the reference Court the amount due and payable including the statutory benefits within a period of four months.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)

(vjn)